(1) Supreme Court, U.S.
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No. _____

In the

SUPREME COURT OF THE UNITED STATES

John L. Corrigan,

Petitioner

v.

State of Washington,

Respondents,

On Petition For a Writ of Certiorari to the Supreme Court of The State of Washington

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PETITION FOR A WRIT OF CERTIORARI

John L. Corrigan
31912 – 53rd Place South
Auburn, WA 98001
253.735.5025

QUESTIONS PRESENTED

Whether a state statute authorizing authorities to arrest an individual for refusing to sign a civil infraction as acknowledgment of receipt – is unreasonable and, therefore, unconstitutional as it violates the 4th Amendment to the U.S. Constitution.

Whether a state sentence of both jail time and a $500 fine for refusing to sign a civil infraction as acknowledgment of receipt – is cruel and unusual punishment as it violates the Eighth Amendment of the U.S. Constitution.

Whether the state denied due process by circumventing court rules, thereby failing to provide proper appellate review – violating the Fifth Amendment of the U.S. Constitution.

Whether the state in subjecting a person to both a civil and a criminal judicial proceeding emanating from the same behavior – violates the double jeopardy clause of the Eight Amendment of the U.S. Constitution.

(As applicable to the states through the 14th Amendment of the U.S. Constitution)

LIST OF PARTIES

For the Petitioner:

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For the Respondent:

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OPINIONS BELOW

The opinions of the Supreme Court of Washington, The Court of Appeals of the State of Washington, Division III, and the Adams County Superior Court are unreported.

JURISDICTION

The judgment of the Superior Court of Washington for Adams County was entered on November 18, 2003. (Appendix I). The Commissioner's Ruling of the Court of Appeals of the State of Washington, Division III, was entered on March 14, 2004. (Appendix IX). On review to the Supreme Court of Washington, the Supreme Court of Washington submitted a Ruling Denying Review on August 12, 2004, (Appendix XI) and denied Petitioner's Motion to Modify the Commissioner's Ruling on November 3, 2004. (Appendix - XIJ

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS

The 4th (Unreasonable Search & Seizure), 5th (Double Jeopardy and Due Process), 8th (Cruel & Unusual Punishment), and the 14th (States Obligation for Due Process and Equal Protection) Amendments to the U.S. Constitution.

STATEMENT OF THE CASE

Corrigan was stopped for speeding (7 miles over the speed limit) and refused to sign the traffic citation. He was given a misdemeanor citation which he also refused to sign. He was then arrested, placed into handcuffs, searched, and transported in a police car the 5-10 miles to Ritzville, Washington. His car was searched and impounded. He was turned over to the jailer at the Adams County Jail. He was booked, fingerprinted, photographed, stripped of his clothes, and given an orange prison outfit to wear. Approximately 4 hours later, he was taken in chain type handcuffs before Judge Hille. He was charged with "failure to sign a traffic infraction" and released on his Own Recognizance (OR) with miscellaneous conditions placed on his OR release.

Corrigan contested both the infraction and the misdemeanor refusal to sign. He requested to consolidate the two charges which was granted by the court. The court subsequently reversed its decision. The charge of speeding was defended in a civil proceeding under civil rules, and the charge of failing to sign the infraction in a criminal proceeding under criminal rules. Corrigan was convicted of both charges. He was fined for the civil infraction. For the criminal charge, he was fined $1,000 with $575 suspended and sentenced to 90 days in jail with 85 days suspended. He appealed both charges – individually – to the Superior Court. The speeding charge was appealed to the Washington State Supreme Court and this Court. Both appeals were denied. The charge of failing to sign the infraction was affirmed by the Washington Appellate Court and denied review at the Washington State Supreme Court.

Corrigan complains that the State of Washington violates the 4th, 5th, and 8th Amendments through the duty of the State under the 14th Amendment to the U.S. Constitution.

Corrigan's Motion For Discretionary Review to the Washington State Supreme Court included assignments of error for the violation of the 4th, 5th, 8th, and 14th Amendments of the U.S. Constitution.

Whether a state statute authorizing authorities to arrest an individual for refusing to sign a civil infraction as acknowledgment of receipt – is unreasonable and, therefore, unconstitutional as it violates the 4th Amendment to the U.S. Constitution.

ARGUMENT

The state has decriminalized certain traffic infractions. However, the lines are not drawn between situations that are civil and situations that are criminal. It is unconstitutional to arrest someone for refusing to sign an acknowledgement[1] of a civil traffic infraction.

I. *ACKNOWLEDGEMENT* STATUTE IS UNCONSTITUTIONAL

A. Lack Of Justification For Arrest

Arresting someone for refusing to sign an "acknowledgement" of a traffic infraction is unconstitutional. This Court's recent ruling confirmed that "[I]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." Atwater v. City of Lago Vista, 121 S. Ct. 1536,

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[1] Some states require a violator to sign as a "promise to appear" or as agreement to follow the instructions outlined in the citation. However, in Washington State, you are only signing for "acknowledgement of receipt." RCW 46.61.021(3).

1557 (2001). Lake Atwater I was stopped for a traffic violation (speeding). However, unlike Atwater . . . and Texas, speeding is not a crime in Washington. The "crime" I was arrested for was refusing to acknowledge receipt of the civil traffic citation.

Here is how it worked. Because I refused to sign a "civil" traffic citation as acknowledgement of receipt, I was given a "criminal" citation. Because I refused to sign that, I was arrested for this minor criminal offense because it happened in the officer's presence – even though he technically initiated it. This as unreasonable and unconstitutional under the 4th Amendment.

> Yet Carey's "constitutional claim does not stem from an absence of probable cause to arrest, but from the alleged unconstitutionality of the [statutes] justifying the arrest." *Grossman*, 33 F.3d at 1203. If the statutes are unconstitutional, then Carey suffered constitutional injury by being arrested under their authority, despite their applicability to his conduct. *Id.* At 1204.

Carey v. Nevada Gaming Control Bd., 279 F.3d 873, 880 (9th Cir. 2002). The statute is unconstitutional on its face. You cannot arrest someone under the 4th Amendment for refusing to acknowledge a piece of paper – this is unreasonable.

B. State Routinely Mails Infractions To Alleged Violators

How can the state arrest someone for refusing to acknowledge receipt of a traffic citation – when, in fact, the state routinely ***mails*** them to violators?

> (a) Generally. A person who has been served with a notice of infraction must respond to the notice within 15 days of the date the notice is personally served or, ***if the notice is served by mail,*** within 18 days of

> the date the notice is mailed. [Emphasis added]

Washington Court Rules, State, 2005, Infraction Rules For Courts Of Limited Jurisdiction Rule 2.4 Response To Notice. It is certainly unreasonable to believe that the state can throw you in jail – and then sentence you to a fine and further jail time - for not personally acknowledging receipt for the same traffic infraction that the state could just send through the mail.

> . . . an official may nevertheless be liable for enforcing a statute that is "patently violative of fundamental constitutional principles." [Citation omitted]

Carey, at 881.

C. Arresting Officer Instigated The Misdemeanor

The police officer instigated the criminal citation by requiring me to sign the civil one. How unreasonable is that? The state cannot arrest me for refusing to sign the civil citation, so they write me up on a criminal citation for me to sign or get thrown in jail.
What the police officer did was entrapment.

> . . . perpetrates an entrapment when, for the purpose of obtaining evidence of a crime, he originates the idea of the crime and then induces another person to engage in conduct constituting such a crime when the other person is not otherwise disposed to do so. [Citations omitted]

Black's Law Dictionary, 6th Edition, *Entrapment*, **p. 532.**

Whether a state sentence of both jail time and a $500 fine for refusing to sign a civil infraction as acknowledgment of receipt – is cruel and unusual punishment as it violates the Eighth Amendment of the U.S. Constitution.

II. CRUEL AND UNUSUAL PUNISHMENT

A. Jail Time Is Cruel & Unusual Punishment

> Punishment which is excessive for the crime committed is cruel and unusual. Coker v. Georgia, 433 Y,S, 584, 97 S.Ct. 2861, 53 L.Ed.2d 982.

Black's Law Dictionary, 6th Edition, *Punishment. – Cruel and unusual punishment*, p. 1234. Cruel and unusual punishment is prohibited by the Eight Amendment to the U.S. Constitution.

My "crime" was refusing to sign an "acknowledgement" of a traffic infraction. A "crime" that the state did not prove at trial. The state only proved that I did not sign the traffic infraction – which is not a crime in itself.

> Thus, Tilton did not refuse to acknowledge receipt of a copy of the notice of infraction merely because he declined to promise to appear in court, and the City's evidence is insufficient to prove the facts needed to convict under RCW 46.61.021(3).

Port Orchard v. Tilton, 889 P.2d 953 (Wn. App. 1995). The arresting officer even admitted at the trial that he did not ask me, specifically, to acknowledge receipt of the traffic citation - simply to sign it.

> Corrigan: It is my understanding that the law is very specific, and here you are asking for three different

things. I am just trying to figure out which one you are asking for.
DALE: I was only asking for one thing, which was a signature.
CORRIGAN: A signature. Accepting receipt, promising to appear, or promising . . .
SCUDDER: [prosecutor] Objection: at this point he is badgering the witness – asking the same questions over and over.
JUDGE HAILE: Sustained.

Re-Cross Examination of Officer Dale, Corrigan DEF – 09000017. Court testimony. The reason for the cruel and unusual punishment for this minor crime, is because of the following:

1. the judge was upset with me for putting the state through two trials – where the same witnesses appeared, same judge, same prosecutor, same defense, and same testimony given (the criminal trial also had a jury where the civil did not).
2. the judge was upset that I did not take the plea bargain that the prosecutor indicated was offered to me; and
3. the judge complained that I was not sufficiently remorseful for the crime I committed.

As to the two trials, I argued numerous times for consolidation and later double jeopardy. The court refused because it was "impossible" since one infraction was a civil matter and one was a criminal matter. As to the plea bargain, one year's probation for something that seemed so obviously a violation of my 4th Amendment right to be free from unreasonable search and seizure, was absolutely unreasonable. As to the remorse, this was a 4th Amendment violation from the start. Why should I show remorse for standing up to something so unreasonable?

For whatever reason, jail time and a $500 fine is cruel and unusual punishment for refusing to sign a "civil" traffic infraction.

Whether the state denied due process by circumventing court rules, thereby failing to provide proper appellate review – violating the Fifth Amendment of the U.S. Constitution.

III. DENIED DUE PROCESS ON APPEAL

The Superior Court and the Court of Appeals denied me due process on appeal. The Superior Court refused to provide me with an adequate review because it claimed that I failed to provide the full testimony of Trooper Dale. The Court of Appeals also used that as an excuse to deny me full review.

I filed the testimony of Trooper Dale according to RALJ 6.3.1 Transcript of Electronic Record. The prosecutor motioned the court for me to include ***all*** the testimony of Trooper Dale. This was unfair and put a tremendous burden on me to go through the tapes and record all the testimony – including 99% which was irrelevant.[2] Further, it was contrary to the rule.

It was up to the prosecutor to provide this information – not me through a motion to the court. I was denied due process..

> If the respondent wishes to add to or challenge the transcript of the recording of proceedings, the respondent shall file and serve an additional transcript with the respondent's brief.

RALJ 6.3.1(b) Transcript by Respondent.

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[2] I did attempt to do it but got very frustrated early on trying to figure out what was said and then putting it down on paper.

The court denied me due process by not requiring the prosecutor to provide his own transcript of the recording of proceedings. Besides, there was no showing that Trooper Dale had anything relevant to say on behalf of the prosecutor. This was just harassment and intimidation by the court and the prosecutor.

After all, here is a criminal prosecution where I have to provide my own transcript. Now I am expected to provide one to the prosecutor and court or the court will refuse to here my appeal. That is not due process. I followed the rules of appeal but the court and the prosecutor did not. Further, in the drafter's comments of this rule the drafters: 1) recognized the difficulty in transcribing the record; 2) drafted the rule to minimize adverse effects on pro se defendants, public defenders' offices, and others; 3) stated that transcripts are intended as an aid to the superior court judge, not as a formal part of "the record"; 4) allowed the respondent to supplement the transcript; 5) and, required that the person preparing the transcript declare, under penalty of perjury, that it is true and correct.[3] The court placed unfair emphasis on Dale's testimony. If the prosecutor wanted to challenge it, he is the one that should have provided that to the court.

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.

Marshall v. Jerrico, Inc., 100 S.Ct. 1610, 1613, (1980). Both the Superior Court and the Washington Appeals Court denied me due process by not considering the transcript submitted. If the prosecutor challenged the transcript, then by court rules, he should have provided the court with his own.

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[3] Author's Comments p. 225-227, RALJ 6.3A annotated.

Whether the state in subjecting a person to both a civil and a criminal judicial proceeding emanating from the same behavior – violates the double jeopardy clause of the Eight Amendment of the U.S. Constitution.

IV. DOUBLE JEOPARDY

> In short, the constitutional prohibition against double jeopardy represents two fundamental and distinct protections: that no person should be harassed by successive prosecutions for a single wrongful act and that no person should be punished more than once for the same offense.

Commonwealth v. Bolden, 98 ALR3d 958, 967.

I was forced to go through a civil trial and then a criminal trial. The state would not consolidate the two issues: (1) speeding; and (2) failing to sign acknowledgement – both prosecutions for a single wrongful act. If it is the intent of the state to decriminalize traffic infractions (*R.C.W. 46.63.010),* then the state should provide for situations like this.

Either make everything civil or make everything criminal. Claiming that speeding is a civil matter, without making a subsequent ancillary matter also civil, only shows that speeding – even though called a civil matter by the state – is really a criminal matter.

> Civil sanction's essence as punishment, within context of double jeopardy analysis, can be identified only by assessing character of actual sanctions imposed on individual by machinery of state. U.S.C.A. Const.Amend. 5; West's A.I.C. Const. Art. 1, § 14. Bruamt v. State. 660 N.E. 2d 290, 64 A.L.R. 5th 867 (**Ind.** 1995)

Double Jeopardy, Key 23. Speeding is not a private wrong. The state has brought both the civil and the criminal prosecutions solely on behalf of the public. Splitting them up violates double jeopardy.

> Government may not criminally prosecute defendant, impose criminal penalty upon him, and then bring separate civil action based on same conduct and receive judgment that is not rationally related to goal of making Government whole without violating double jeopardy clause. U.S.C.A. Const. Amend. 5. U.S. v. Halper, 109 S.Ct. 1892, 490 U.S. 435, 104 L.Ed.2d 487.

7A S Ct D – 15, Double Jeopardy Key 23.

ARGUMENT CONCLUSION

In decriminalizing certain traffic infractions, the state has failed to properly insulate people from unconstitutional statutes and multiple trials.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2005

SUPERIOR COURT OF WASHINGTON FOR ADAMS COUNTY

STATE OF WASHINGTON
Plaintiff

vs.

JOHN L. CORRIGAN,
Defendant.

NO.03 1 000442

MEMORANDUM DECISION

John L. Corrigan, hereinafter "CORRIGAN" appeals a Ritzville District Court jury verdict finding him guilty of Failure to Sign a Notice of Infraction, RCW 46.61.021(3). The Court heard oral argument on the appeal on Monday, November 3, 2003.

STANDARD OF REVIEW

This court's function, as a reviewing court, is set forth in RALJ 9.1. First, the decision of the lower court must be reviewed to determine whether that court has committed any errors of law. In doing so, this court must accept those factual determinations supported by substantial evidence in the record which were either expressly made by the lower court or which may be reasonably inferred from a judgment of a lower court. After making a review as outlined above, this court may reverse, affirm or modify the decision of the lower court or remand the case back to the lower court for further proceedings. RALJ 9.1(e). This court cannot substitute its judgment for that of the trial judge or weigh evidence or assess credibility of witnesses. *Davis v. Department of Labor and Industries,* 94 Wn. 2d 119, 124 (1980); *Walk v. Department of Licensing,* 95 Wn. App. 653, *656* (1999).

II

FACTS[4]

On February 6, 2003, Trooper Burt was operating a laser speed measuring device (SMD) at mile post 231 on I-90 at 0850 hours. The trooper observed Corrigan's vehicle west bound at a speed which appeared to be in excess of the posted speed limit, 70 miles per hour. Corrigan's speed was visually estimated at 80 miles per hour as his vehicle was approaching the trooper. The laser SMD showed a visual display of 77 miles per hour at a distance of 0748 feet. Trooper Burt alerted Trooper Dale to the speeding vehicle whereupon Trooper Dale stopped the vehicle and contacted the driver. Corrigan stated-he was a little above 70 miles per hour. The officer observed two radar detectors in the vehicle. He was issued a traffic infraction notice for Speed, 77 miles per hour in a posted 70 miles per hour zone.

Upon contacting Corrigan, Trooper Dale advised him that he would be cited for speeding. He requested that Corrigan sign the Notice of Traffic Infraction. Corrigan refused. Trooper Dale requested on three separate occasions that Corrigan sign the Notice of Traffic Infraction. Trooper Dale then wrote "receipt acknowledged" on the Notice of Infraction whereupon defendant again refused to sign. Trooper Dale then wrote "refused" in the blank marked defendant's signature. He then advised Corrigan that he

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[4] Corrigan provided only a transcript of the electronic record of proceedings which included a small portion of the cross-examination and re-cross-examination of Trooper Dale. Following hearing on the State's Motion to Compel, the court entered an Order dated October 2, 2003, compelling appellant Corrigan to transcribe all of the trial testimony of Trooper Dan Dale including direct and re-direct examination. On October 27, 2003, appellant's objection to Order to Transcribe was filed, but appellant failed to note the same for argument. At the time of this oral argument, only the initial thee pages of a transcript of electronic record had been filed. No agreed record has been filed. The appellant has violated the court's order. The court has relied for the most part on the Record of Proceedings certified by the court below or on any reasonable inferences that can be inferred from the judgment in an attempt to determine the underlying facts where possible.

would have to issue a criminal citation if he refused to sign the infraction notice. Corrigan again refused. Trooper Dale prepared a criminal traffic citation which charged Corrigan with Failure to Sign Notice of Infraction, RCW 46.61.021(3). Trooper Dale explained that if he refused to sign the criminal citation he would have to be booked. The defendant refused to sign the citation and stated "let's go." The defendant was arrested and transported to the Adams County Jail.

Corrigan appeared before the Ritzville District Court on the 6th of February, 2003. He was advised of his rights at arraignment but refused to sign the acknowledgment of the reading of them. Ilis refusal was noted. lie was released on conditions, but was not required to post bail. A jury trial was set to commence on April 4, 2003.

On February 20, 2003, Corrigan filed a Motion to be Released on Personal Recognizance, Motion to Consolidate Related offenses, Motion for Bill of Particulars and Demand for Discovery. On March 24~ Corrigan requested a continuance. His pre-trial date was continued to April 29, 2003 and the trial date to May 9, 2003.

On May 6, 2003, the State filed its Motion and Affidavit for an Order to Amend Criminal Complaint. That Motion was granted on the 7th of May, 2003. A jury trial was held on May 9, 2003. The jury returned a verdict of guilty to the crime of Failure to Sign a Notice of Infraction. The defendant was sentenced on May 9, 2003. He was fined $1,000.00 with $525.00 suspended and sentenced to ninety (90) days in jail with eighty-five (85) days suspended. Corrigan then filed his Notice of Appeal and processed the same in a timely fashion.

IV

ASSIGNED ERRORS[5]

1. Denial of due process (Failure of Proof).
2. Bias of the trial court.
3. Improper jury instructions.
4. Improper initial complaint.
5. Failure to provide discovery.
6. Unconstitutional seizure and search.
7. Failure to consolidate.

DISCUSSION

1. I NEVER REFUSED TO ACKNOWLEDGE RECEIPT OF TRAFFIC INFRACTION. This argument in Corrigan's brief does not appear to be one of the assigned errors in his certificate. It appears to the court and therefore it will treat this argument as a challenge to the sufficiency of the evidence as presented to the trier of fact. Appellant, however, refused to comply with the Court's order directing that he provide a transcript of all of the arresting officer's testimony at the trial court. His failure to do so has deprived the court of the opportunity to review the very evidence that Corrigan claims is insufficient to support a verdict. Corrigan bears the burden of presenting an adequate record and bears the consequences of the court's inability to conduct a full review. Failure to provide a complete transcript of the electronic record places the court in a position where it would be necessary to speculate in order to determine the facts upon which the jury based their verdict. *Sunderland Servs. V. Pasco,* 107 Wn. App. 109, 116, (2001).
The court has attempted, of necessity, to reasonably infer the

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[5] Appellant's brief does not set out his assigned errors in the same order as in his Certification of Filing Status filed with Ritzville District Court on May 30, 2003. The court has, for convenience, listed and subsequently discussed the claimed errors in the same order as they are presented in Corrigan's brief.

facts presented from the judgment of the court and the record of proceedings. The testimony of Trooper Dale, although incomplete, and perhaps contradictory, indicates that Trooper Dale wrote on the Notice of Infraction "receipt acknowledged" and asked Corrigan to sign. He refused. The Notice of Infraction was also placed in evidence. What little evidence this court was able to review indicates that although the facts may have been in dispute, there were facts when viewed in a light most favorable to the State upon which a reasonable juror could find beyond a reasonable doubt that Corrigan failed to acknowledge receipt of the infraction notice when he refused to sign the same. The court cannot substitute its judgment for that of the trier of fact or weigh the evidence or assess credibility of witnesses. *Davis v. Department of Labor and Industries,* supra., *Walk v. Department of Licensing,* supra.

2. MOTION TO CONSOLIDATE RELATED CASES. The court has already determined this issue in the related traffic infraction appeal. The court merely repeats its prior decision here. IRLJ 2.6(A)(3) allows consolidation of unrelated contested infractions. CrRLJ 4.3(a) allows joinder of criminal offenses which are based on the same conduct or acts. The speeding charge is a traffic infraction. Failure to Sign an Infraction is a criminal offense. Neither CrRLJ 4.3(a) nor IRLJ 2.6(a)(3) allow filing of a civil traffic infraction with a criminal traffic offense. The mandatory joinder rules do not apply to this situation. *State v. Keltner,* 102 Wn. App. 396, 399 (2000). The court did not commit error when it refused to consolidate the traffic infraction and the criminal traffic offense.

3. JUDGE WAS BIASED. Corrigan's assertions that the trial judge was biased are based upon two matters, namely (1) that the trial judge failed to PR him without conditions and (2) that the sentence was in his words

"outrageous". Corrigan has failed to provide either the portion of the transcript of the electronic record which includes his arraignment or the sentencing portion of his trial. There is no evidence before this court that either of these issues was raised at the trial court level. Generally speaking, failure to raise bias or judicial misconduct at the trial level will not be considered for the first time on appeal. *Hogenson v. Service Armament Company,* 77 Wn. App. 209, 216-217 (1969).

Violation of RCW 46.61.021(3), Failure to Sign a Notice of Infraction has been designated by the legislature as a misdemeanor. The maximum penalties for a misdemeanor are not more than ninety (90) days in jail or a fine of $1000.00 or both. Judge Hille's sentence did not exceed the maximum allowable by law.

As previously stated, this court cannot substitute its judgment for that of the trial judge on issues involving discretion. Corrigan has failed to present any evidence on the record to substantiate his claim of bias. He has presented no evidence to support his claim that Judge Hille abused her discretion.

Corrigan has failed to comply with RALJ 6.3.1(c). He has also violated the court's Order compelling him to provide a transcript of the electronic record. In the absence of a transcript, this court cannot consider assignments of error which could not be determined without the referenced evidence. *Black v.*

Porter, 31 Wn. 2d 664, 666-667 (1948) . therefore the appellant having failed to comply with the court rule and the order of this court in failing to provide any record of the trial court below this court declines to review this issue.

4. DISCOVERY WAS NOT PROVIDED. Corrigan has asserted that he was not "entirely" provided all of the discovery he requested. He has failed to specify which

discoverable items he was entitled to and which were not provided. He has not cited to the record of proceedings nor has he provided the court with a portion of the transcript of electronic record wherein he brought to the trial court's attention the failure of the State to respond to his discovery requests. The matter having not been properly addressed to this court will not be considered on appeal.

5. IMPROPER INITIAL COMPLAINT. Corrigan argues that he was not properly informed of the charge against him. The "essential elements rule" was stated in *Auburn v. Brooke,* 119 Wn. 2d 623 (627-628)(1992)

> An accused must be informed the criminal charge he or she is to meet at trial and cannot be tried for an offense which has not been charged. It has long been settled law in this state that all essential statutory elements required must be included in the charging document in order to afford notice to an accused of the nature and cause of an accusation against the accused...

A Bill of Particulars was prepared and a copy provided to Corrigan on March 7, 2003.

7. IMPROPER JURY INSTRUCTIONS. Corrigan assigns error to the court's instructions to the jury, No. 4 and No. 7. RALJ 6.3.1 (c *)* provides in part, as follows:

> If the appellant intends to urge that the court erred in giving or failing to give an instruction, the appellant shall include all objections to the instructions given and refused and the court's rulings.

Our courts have long held that on appeal an objection to the giving of an instruction or an exception to the failure to give a proposed instruction must include the points of law and the reason that the court is conimitting error. *Stewart v. State,* 92 Wn.2d 285, 298-299 (1979); *Goehle v. Fred Hutchison Ctr.* 100 Wn. App. 609, 613-

617 (2000).
Corrigan failed and then subsequently refused to provide an adequate record to enable the court to examine and determine whether there had been compliance with CrRLJ 6.15(b)(c). Corrigan also failed to provide a sufficient record for the Court to examine whether the trial court was given an opportunity to correct any alleged mistakes in those instructions. The record is silent pertaining to any proposed instructions offered by Corrigan. Therefore, there is nothing for this court to review with reference to the giving of the court's instructions to the jury and this court declines to do so.

8. UNLAWFUL SEARCH AND SEIZURE. Corrigan asserts that his arrest and subsequent search incident thereto and the impound of his vehicle were violations of the 5th Amendment. He failed to cite any authority to the court in support of his position. He also failed to provide a transcript of electronic record wherein this issue was argued to the trial court. Corrigan therefore has failed to cite any facts or authority to support his allegation that the charges should have been dismissed. In addition, it is hard for the court to imagine how an unlawful search and seizure could have any affect upon the case on appeal. The normal remedy for unlawful search is suppression of evidence, here the only evidence is the notice of infraction and presumably the trooper's testimony surrounding its issuance.

CONCLUSION

Based upon the foregoing, the jury verdict finding Corrigan guilty of Failure to Sign a Notice of Infraction, RCW (3) and the Judgment and Sentence that followed is affirmed.

DATE: 18 Nov 30 /s/ Richard Miller
SUPERIOR COURT JUDGE

The Court of Appeals of the State of Washington Division III

STATE OF WASHINGTON, Respondent, v. JOHN L. CORRIGAN, Petitioner.	No. 22688-3-III COMMISSIONER'S RULING

Having considered a motion by Petitioner John L. Corrigan for discretionary review of an Adams County Superior Court order affirming his District Court conviction of failing to sign a notice of infraction; having considered the record provided, the file and the oral argument of Mr. Corrigan and counsel; and being of the opinion (1) without citation to applicable supporting authority,Mr. Corrigan's constitutional arguments about trying his civil and criminal matters together are "naked castings into the constitutional sea" are not therefore sufficient to command judicial consideration and discussion, In re Rosier. 105 Wn.2d 606, 616,717 P.2d *353* (1986)(quoting United States v. Phillips, 433 F.2d 1364, 1366 (8th Cir. 1970); (2) Mr. Corrigan was not arrested for not identifying himself—he was arrested for failing to sign a notice of infraction—which renders his case distinguishable from Carey v. Nevada Gaming Control Bd. 279 F.3d 873 (9th Cir. 2002), upon which he relies; (3) the Superior Court's decision requiring the full transcript for Mr. Corrigan's challenge to the sufficiency of the evidence is not an abuse of discretion because it is contemplated by the rules, RAU 6.3.1(b), (c); (4) Mr. Corrigan's failure to provide the complete

record, despite the Superior Court's order to the contrary, precluded that court and this Court from fully reviewing his challenge to the sufficiency of the evidence, and (5) in view of the foregoing, Mr. Corrigan has failed to demonstrate any of the applicable criteria of RAP 2.3(d), now, therefore,

IT IS ORDERED, the motion for discretionary review is denied.

March 16, 2004.

/s/ Frank v. Slak Jr.
Frank v. Slak Jr.
Commissioner

THE SUPREME COURT OF WASHINGTON.

STATE OF WASHINGTON,
Respondent,
v.
JOHN L. CORRIGAN,
Petitioner.

NO.75569-8
RULING DENYING REVIEW

John Corrigan was convicted in Ritzville District Court of failing to sign a notice of infraction, in violation of RCW 46.61.021(3). He appealed, but the Adams County Superior Court affirmed. The Court of Appeals denied discretionary review. Mr. Corrigan now moves for discretionary review by this court.

For the reasons stated in Court of Appeals Commissioner Slak's ruling, Mr. Corrigan has not established that the superior court decision qualified for review under the criteria of RAP 2.3(d), or, in turn, that the Court of Appeals erred in denying review. RAP 13.5(b). As to the claims Mr. Corrigan raised in the Court of Appeals, I would only add to Commissioner Slak's analysis the observation that *Carey v. Nevada Gaming Control Board,* 279 F.3d 873 (9th Cir. 2002), on which Mr. Corrigan relies for one of his arguments, was essentially overruled in *Hiibel v. Sixth Judicial District Court of Nevada, U.S.* —, 124 S. Ct. 2451, L. Ed. 2d (2004).

Mr. Corrigan also for the first time challenges his sentence as cruel and unusual punishment. This claim was not made in any of the courts below, however, and even here is not supported by argument or authority. It therefore provides no basis to afford Mr. Corrigan any relief.

The motion for discretionary review is denied.

August 12, 2004 /s/
COMMISSIONER

THE SUPREME COURT OF WASHINGTON.

STATE OF WASHINGTON, Respondent, v. JOHN L. CORRIGAN, Petitioner.	**ORDER** NO.75569-8 Adams County No. 03-1-00044-2 C/A #. 22688-3-III

Department I of the Court, composed of Chief Justice Alexander and Justices Johnson, Sanders, Bridge and Owens, considered this matter at its November 3, 2004, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 3rd day of November, 2004.

For the Court

/s/Gerry L. Alexander
CHIEF JUSTICE